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Letter dated 19 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 October 2003 (S/2003/1008). The Counter-Terrorism Committee has received the attached fourth report from France submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 17 March 2004 from the Permanent Representative of France to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Please find attached hereto the fourth supplementary report submitted by France to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Jean-Marc **de La Sablière**

Enclosure

Fourth supplementary report submitted by France to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

March 2004

1. Implementation measures

Effectiveness in protection of economic and financial system

1.1 Subparagraph 1 (a) of the resolution requires all States to suppress the financing of terrorism. The first report from France states (at page 5) that: "financial bodies shall declare to the French financial intelligence unit (TRACFIN) any suspect transactions which may be linked to drug trafficking or the activities of criminal organizations". The second report from France (at page 4) states that French law does not spell out any penalty for failure to comply with the obligation to report suspicious transactions and that "in the event of a blatant omission or grave negligence, TRACFIN — which has no power to sanction — alerts the monitoring authority or the federative body of the professional involved". The CTC would appreciate receiving information as to whether any cases involving failure to comply with reporting obligations have been detected and whether any sanctions have been imposed.

1. Except where there is fraudulent connivance with the owner of the funds in question or the person making the transaction, those who comply with their obligation to report suspicious transactions (cf. the reply below to question 1.5) shall not be liable to any criminal prosecution. As stated in France's second report to the Committee, French law does not spell out any penalty for failure to comply with the reporting obligation. On the other hand, where such omissions are ascertained, prosecutions may legally be brought on the charge of financing terrorism or money-laundering (or complicity in such offences). Such prosecutions are possible only in the event of fraudulent connivance. Thus far, however, no prosecutions or convictions have occurred in France in such a case and on that particular ground.

2. In addition, TRACFIN devotes much of its activity to raising awareness among professionals subject to the reporting obligation so as to enable them, in the conduct of their daily business, to detect any situation that might warrant a suspicious transaction report, and to remind them of the administrative and judicial penalties to which they may be liable.

Furthermore, a "liaison committee to suppress the laundering of proceeds of crimes and offences", co-chaired by TRACFIN and the Ministry of Justice, has recently been established by the legislature (New Economic Regulations Act of 15 May 2001 — article L.562-10 of the Monetary and Financial Code). To date, this authority has 30 members from all of the reporting professions, the supervisory authorities and various government departments (Ministry of the Economy, Finance and Industry, Ministry of Justice and Ministry of the Interior).

Its aim is to enhance the mutual exchange of information among its members and to produce proposals for improving the national anti-money-laundering

mechanism. The committee and its working groups also provide the opportunity to impress upon professionals that fulfilment of their obligations in this regard is of great importance.

For its part, the Banking Commission is responsible for monitoring compliance by credit establishments, investment firms and exchange offices with the legislative and regulatory provisions applicable to them, as well as for penalizing any verified omissions. In that capacity, it monitors compliance with TRACFIN reporting obligations.

To that end, the Banking Commission uses an annual questionnaire, which includes questions relating to the discovery mechanism for suspicious transactions and to the number of reports made. It also carries out on-site checks to ascertain that procedures for detecting and reporting suspicious transactions are in place, in particular, through probes of the transactions.

It conducts some 200 investigations annually; in 2001-2002, 70 specific investigations relating to prevention of the financing of terrorism were carried out. Article L.562-7 of the Monetary and Financial Code provides that: "Where a financial agency or person referred to in article L.562-1 fails to meet the obligations arising under the present title, whether owing to a serious lack of vigilance or to the inefficient organization of internal monitoring procedures, the disciplinary authority shall institute proceedings on the basis of the professional or administrative regulations and shall so notify the government procurator."

In 2002 and 2003, the Banking Commission penalized 10 credit establishments, one investment firm, one financial company and four exchange offices for failure to report suspicious transactions.

These entities were faulted for a total of 100 reporting failures (56 in 2002 and 44 in 2003).

As penalty, various fines, ranging from 50,000 to 228,673.53 euros (FF 1.5 million), were imposed on the credit establishments. The investment firm was struck off the list and a receiver was appointed. The financial company was punished with a reprimand and a fine of 50,000 euros. The exchange offices were also punished with reprimands and fines of between 20,000 and 37,500 euros.

Over that same period, the Banking Commission further penalized 23 other financial institutions for additional failings in their monitoring mechanism.

1.2 Regarding the suppression of the financing of terrorism as required by subparagraph 1 (a) of the resolution, the CTC would appreciate receiving information as to how TRACFIN is structured and staffed (financially and technically) so as to enable it to perform its mandated functions. Please provide data concerning the requirements referred to immediately above.

General introduction

Established in 1990 within the Ministry of the Economy, Finance and Industry, TRACFIN, the financial intelligence unit which is similar to the Financial Action Task Force on Money Laundering (FATF), is tasked primarily with the suppression of both money-laundering and the financing of terrorism.

It handles suspicious transaction reports from financial organizations and various non-financial professionals subject to reporting obligations (property agents, casino managers, dealers in high-value goods) that must be produced where there is a possibility that the sums entered in their books or the transactions relating thereto derive from drug trafficking or organized crime or are used to finance terrorism.

TRACFIN corroborates the initial suspicion by assessing the economic justification of financial flows and seeking to establish a possible link with a criminal milieu.

In order to perform its task successfully, TRACFIN has specific powers:

- It may **stop** execution of the reported transaction for a period of no more than 12 hours, which may be extended by the president of the Paris Court of Major Jurisdiction;
- It may **demand** all papers and documents relating to a suspicious transaction report in order to reconstruct all the transactions made by a natural person or legal entity that are linked to the suspect transaction.

It may also exchange information with the Central Office for the Suppression of Serious Financial Crimes (OCRGDF), the customs administration and the supervisory authorities for the reporting professions, as well as with their foreign counterparts.

As a counter to the powers vested in it, TRACFIN is bound by rules of ethics and confidentiality that are strictly defined by law. The information referred to it through suspicious transaction reports cannot be used for purposes other than to combat money-laundering and the financing of terrorism, nor may it be transmitted to parties other than those specifically listed (cf. the preceding paragraph).

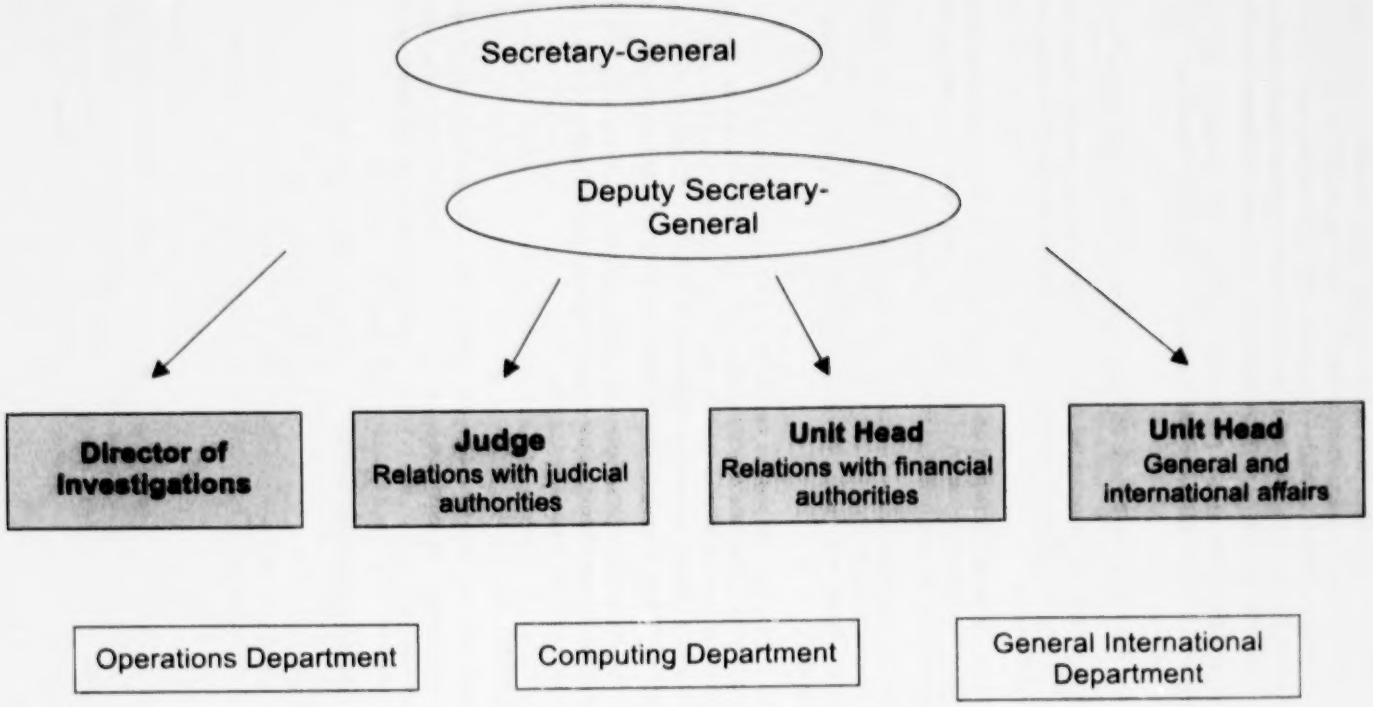
In the event that a presumption of money-laundering or financing of terrorism is established on completion of the expert financial appraisal, the facts are brought to the attention of the judicial authorities.

Organization

Under the authority of a secretary-general and a deputy secretary-general, the task of supervising and mobilizing the unit is carried out by a judge, the director of investigations in charge of the centre of operations, and two unit heads of general and international affairs and relations with financial authorities.

(Cf. the organizational chart below)

ORGANIZATIONAL CHART



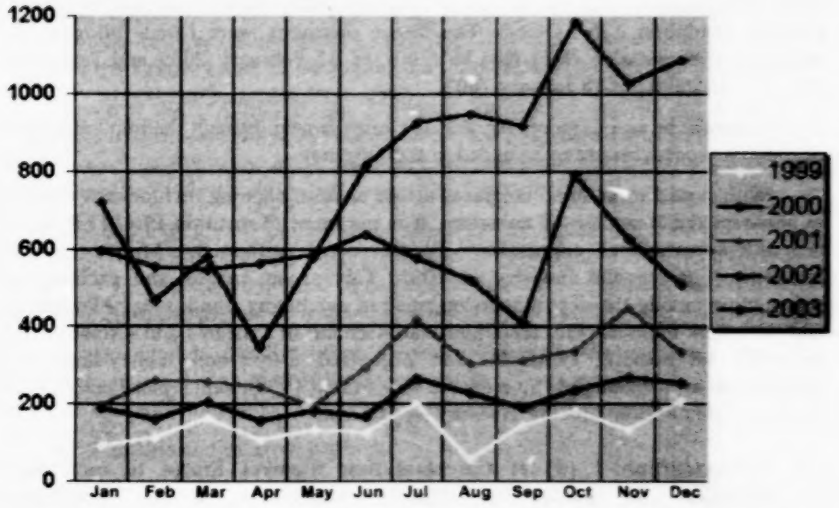
Agents

TRACFIN currently has a staff of 48 (33 of whom are in charge of operational analysis, which constitutes the core of the unit) from various administrative departments, particularly financial ones (Directorate-General of Customs and Excise, decentralized units of the Treasury Department). The staff also include two officers made available by the Ministry of Defence and the Ministry of the Interior, respectively, in 2002 and 2003. Given the different perspectives which it involves, this multidisciplinary approach promotes the strengthening of expert capacities and the development of interdepartmental synergy.

Budgetary resources

TRACFIN's total running costs, which are financed by the Ministry of the Economy, Finance and Industry, are estimated at 2.6 million euros.

TRACFIN's activity has grown constantly since its establishment in 1991, as illustrated by the graph below, showing the increase in the number of reports over the past five years.



Sufficient human and material resources have always been provided in tandem with this development; hence, in addition to the gradual strengthening of its staff (from 15 in 1991 to 48 as at 1 January 2004), the unit was transferred in March 2003 to new and more efficient premises offering higher security.

1.3 Subparagraph 1 (c) of the resolution requires States to freeze funds and other financial or economic resources related to terrorism. In this regard, does France have a separate authority or agency responsible for seizing and confiscating terrorist-related assets? If the answer to the above question is in the affirmative, the CTC would appreciate receiving an

outline of the legal basis for such an authority or agency as well as an outline of its functions. Please also indicate the financial magnitude of the assets frozen.

The Treasury Department of the Ministry of the Economy, Finance and Industry freezes the financial assets and economic resources of those who commit or attempt to commit acts of terrorism.

Statistics:

	Frozen	*Confiscated*
1992	Nil	Nil
.....		
2001	4 420 000 euros	Nil
2002	2 835 euros	Nil
2003	27 362 euros	Nil

The amount shown for 2001 reflects assets held by the entities referred to in Council Regulation (EC) No. 337 of 14 February 2000, adopted pursuant to Security Council resolution 1267 (1999). The freeze measures were lifted following the adoption of Regulation (EC) No. 362/2002 of 27 February 2002 and Regulation (EC) No. 105/2002 of 18 January 2002.

It should be noted, moreover, that the sums frozen through the implementation of judicial procedures are to be added to these figures.

With regard to national measures aimed at strengthening institutional capacity to suppress the financing of terrorism, it is pertinent to mention FINATER, an ad hoc interdepartmental cooperation group created within the Ministry of the Economy, Finance and Industry in 2001. This group enables the exchange of information among the departments engaged in combating fraud, money-laundering and terrorism, together with the Directorate-General of Customs and Excise (which runs the secretariat), TRACFIN (an organized crime and money-laundering intelligence unit established by a decree of 9 March 1990), supervisory entities (the Banking Commission) and the Treasury Department.

1.4 Subparagraph 1 (d) of the resolution requires States to have legal measures in place to regulate alternative money remittance agencies/transfer services and informal banking networks. The second report states (at page 6) that "informal banking activities are already unlawful in France" and that "only artificial persons that have been approved as credit establishments may carry out banking operations". The CTC would appreciate receiving the number of money remittance agencies/transfer services registered and/or licensed in France.

Pursuant to article L.511-10 of the Monetary and Financial Code, credit establishments must obtain the approval of the Committee on Credit Establishments and Investment Enterprises before conducting their business. The banking transactions defined in article L.311-1 of the Monetary and Financial Code and subject to approval include client access to or management of all tools which allow any person to transfer funds, whatever the medium or the technical procedure used.

As at 31 December 2003, the Committee on Credit Establishments and Investment Enterprises listed a total of 492 credit establishments authorized in France to carry out fund transfers, including:

- 466 credit establishments authorized to handle any banking transaction (including banks, mutual and cooperative banks, municipal credit unions, and branches of European Economic Area establishments, and
- 46 financial companies or specialist financial institutions (categories of credit establishments which can only handle certain banking operations authorized by government approval or by their governing legislation) are authorized to transfer funds, four of them on an exclusive basis.

Four public institutions are also authorized by law to transfer funds without approval, namely, the Public Treasury, the Bank of France, the Deposit and Consignment Office and the financial services of the Post Office.[1]

1.5 The second report states (at page 4) that "the obligation to be vigilant (in respect of the fight against money-laundering involving non-financial professions) will be extended to include auditors, external accountants, tax advisers, notaries, lawyers and other members of independent legal professions when the corresponding European Directive becomes part of French law by June 2003". The CTC would appreciate receiving a progress report and an outline of the implementation of those measures.

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 was transposed into national law pursuant to article 70 of Act No. 2004-130 of 11 February 2004 reforming the status of certain judicial or legal professions, judicial experts, patent lawyers and auctioneers.

This law extends the obligation to report suspicious transactions under article L.562-2 of the Monetary and Financial Code to suspicious sums and transactions which may be derived from fraud or corruption against the financial interests of the European Communities.

It also extends the list of professions subject to the reporting obligation referred to in article L.562-1 of the Monetary and Financial Code to the following professionals and companies:

- Accountants and external auditors;
- Notaries, bailiffs, company receivers and liquidators, as well as lawyers at the Council of State and the Court of Cassation and lawyers and solicitors at the courts of appeal (under the terms of article L.562-2-1);
- Judicial auctioneers and companies dealing with voluntary sales of movable property at public auction.

Notaries, bailiffs, company receivers and liquidators, as well as lawyers at the Council of State and the Court of Cassation and lawyers and solicitors at the courts of appeal, are required to make the report provided for in article L.562-2 when, as part of their professional activity, they perform on behalf of and for their client any

[1] Details are provided in annex II.

financial or property transaction or assist their client to prepare or carry through transactions concerning:

- The purchase and sale of immovable property or business assets;
- The management of funds, securities or financial instruments belonging to the client;
- The opening of bank, savings or securities accounts;
- Organization of the contributions needed to establish companies;
- The formation, supervision or management of companies;
- The formation, supervision or management of foreign law trusts or other trusts of a similar nature and structure.

The obligation to report suspicious transactions does not apply when, in conducting business relating to the above-mentioned transactions, accountants give an opinion in accordance with article 22 of Ordinance No. 45-2138 of 19 September 1945 establishing the Association of Accountants and regulating the title and profession of accountant and when, in so doing, they receive information from or relating to a client, either in the context of giving an opinion (except where such opinion is provided for money-laundering purposes or in the knowledge that their client wishes to obtain such opinion for money-laundering purposes), or of conducting their business in the client's interest where the business in question is connected with a judicial proceeding, regardless of whether such information is received before, during or after the proceeding concerned, including in the context of giving an opinion on how to institute or avoid such a proceeding.

Moreover, as an exception to article L.562-2, lawyers at the Council of State and the Court of Cassation, as well as lawyers or solicitors at the court of appeal, may transmit the report, as appropriate, to the president of the Association of Lawyers at the Council of State and the Court of Cassation, to the president of the bar association of which the lawyer is a member, or to the chairman of the company to which the solicitor is attached.

Within the time limits and in accordance with the procedural methods determined by a decree of the Council of State, these authorities shall transmit the report transmitted to them by the lawyer or the solicitor to the department established under article L.562-4, except where they believe that there is no suspicion of money-laundering. In that case, the president of the Association of Lawyers at the Council of State and the Court of Cassation, the president of the bar association of which the lawyer is a member, or the chairman of the company to which the solicitor is attached shall inform the lawyer or the solicitor of the reasons why he deemed it unnecessary to forward the information they transmitted to him. The president of the bar association or the chairman of the company in receipt of a declaration that has not been forwarded to the department established under article L.562-4 shall transmit the information contained in that report to the president of the National Council of Bar Associations or to the president of the National Chamber of Solicitors. The information transmitted shall exclude any personal identification details.

Under the same terms, the president of the Association of Lawyers at the Council of State and the Court of Cassation and the president of the National

Chamber of Solicitors shall, in accordance with a time frame established by a decree of the Council of State, report to the Minister of Justice on the cases which have not resulted in the transmittal of reports. The department established under article L.562-4 shall then receive such information from the Minister of Justice.

Lastly, lawyers at the Council of State and the Court of Cassation and lawyers and solicitors at the courts of appeal are authorized to disclose to their clients that a report on them exists (article L.574-1, as amended).

Furthermore, it should be emphasized that the area covered by the mechanism for reporting suspicious transactions is complemented by the mechanism known as the "declaration of certainty", provided for in article L.561.1 of the Monetary and Financial Code, which stipulates that persons other than those mentioned in article L.562-1 who perform, monitor or advise on transactions involving the movement of funds shall be required to report to the government procurator those transactions which relate to sums which they know to be derived from drug trafficking, organized crime, fraud or corruption against the financial interests of the European Communities, or which may be used to finance terrorism.

The examples given to illustrate the professions to which the declaration of certainty applies by default are no longer current following the entry into force of the Act of 11 February 2004, which explicitly mentions notaries (who, moreover, were already included under the mechanism for reporting suspicious transactions in their capacity as property agents since the passage of Act No. 98-546 of 2 July 1998) and accountants. In that connection, a more relevant example of the national legislation as it currently stands is that of "company service-providers" used in the FATF Forty Recommendations, adopted in June 2003.

1.6 The Committee would appreciate receiving information about accounts which were frozen because of their suspected connections with the financing of terrorism.

Please refer to the information provided in reply to question 1.3.

1.7 In order to effectively implement subparagraph 2 (e), States are required to take measures to ensure that terrorists and their supporters are brought to justice. In this regard has France provided its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- **Typologies and trends to counter terrorist financing methods and techniques?**
- **Techniques for tracing property which represents the proceeds of crime, or which is intended to be used for the financing of terrorism, with a view to ensuring that such property is frozen, seized or confiscated?**

Since 1990 the Directorate-General of the National Police and the Directorate-General of the Gendarmerie have conducted training sessions in anti-money-laundering investigative techniques for all officials in charge of investigations and prosecutions in that area. Since 2000 these training sessions have covered questions relating to terrorist financing. Similar sessions are conducted for magistrates, whether as part of their initial training at the National School for Judges and the

Judiciary, or in the context of further training for magistrates who are called upon to hear cases involving money-laundering and terrorist financing.

Similarly, sessions to raise awareness on the part of professionals subject to monitoring obligations (see reply above) are conducted jointly by the investigation services (OCRGDF), the financial information services (TRACFIN) and the banking sector (risk managers).

Furthermore, the National School for Judges and the Judiciary (ENM) holds training sessions and seminars on terrorism, money-laundering and terrorist financing in the context of further training for judicial magistrates.

In December 2003, for instance, ENM organized a seminar on fighting terrorism for French and Spanish magistrates. International judicial cooperation, analysis of investigation methods, formation of joint investigation teams in terrorism cases and control of terrorist financing were the main items on the agenda at this joint training session.

Furthermore, French magistrates have the opportunity to participate in training courses in economic and financial criminal law; one such course involves investigators from the gendarmerie. These courses enable them to become acquainted with money-laundering methods and investigative techniques designed to curb that phenomenon.

Effectiveness of counter-terrorism machinery

1.8 In order effectively to implement subparagraph 2 (e) of the resolution, States are required to take measures to ensure that terrorists and their supporters are brought to justice. In this regard, are there programmes in place in France to protect members of the judiciary, law enforcement officers, witnesses and persons willing to provide information, from intimidation by terrorists? If there are such programmes, the CTC would be grateful to receive information concerning them.

The protection of magistrates, law enforcement officers, witnesses and persons willing to provide information in the context of criminal proceedings against terrorists is ensured through a number of legal provisions, the implementation of which is explained below.

Protection of magistrates

– *Physical protection of counter-terrorist magistrates*

The six magistrates of the counter-terrorism section of the Paris Prosecutor's Office are under close protection by the police, on a permanent basis (in the case of the section chief), and during their duty week (in the case of the other magistrates of the section). The same applies to the six examining magistrates specializing in terrorism cases, who, for their part, are protected 24 hours a day.

– *Protection instituted during counter-terrorism trials*

Specific protection is also organized during trials of terrorist suspects.

Meetings are held before the trials at the Paris Court of Appeal, in most cases, or at the court of appeal or the court concerned in other cases, between representatives of the first presidency and the general prosecuting authority, the president of the Court of Assize, the prosecuting counsel for the hearing, representatives of police headquarters, the Anti-Terrorist Coordination Unit (UCLAT), the detention centre where the defendants are being held, and the military command of the Paris Law Courts or the local equivalent.

The representatives of the UCLAT provide what information they have regarding any violent action which might be organized during the trial. The transfer of the defendants is carried out by police officers who are usually reinforced by Paris police headquarters.

With regard to the security of the hearing chamber, patrols are conducted at the approaches to the chamber, reinforced, where necessary, by canine teams.

Furthermore, conventional metal detectors are usually installed and baggages are searched.

With regard to the security of the magistrates, the president of the Court of Assize and the prosecuting counsel may, depending on the threat level as determined by the UCLAT, be under close protection. Moreover, there is an established accreditation procedure for journalists. Lastly, special access to the Law Courts and the hearing chamber is often established for civil claimants.

– *Protection of magistrates and other public officials under the Penal Code*

The French Penal Code establishes an aggravating circumstance which increases the penalty incurred by the perpetrator of an offence where such offence is committed against magistrates, jurors, lawyers, public or judicial officers, gendarmerie officers, national police officers, customs officials, prison administration officials, or any other person invested with public authority or a public service mission, with a view to influencing that person's conduct in the performance of his or her duties or mission. This rule applies, in particular, to offences involving control of harmful substances, destruction and damage, poisoning, murder, torture or other barbarous and violent acts.

There are also specific offences designed to protect magistrates and other government officials.

For instance, under article 433-3 of the Penal Code, the threat to commit a crime or an offence against persons or property, when made against a magistrate, juror, lawyer, public or judicial officer, gendarmerie officer, gendarmerie official, customs official, prison administration official, or any other person invested with public authority, if the victim's capacity is evident or known to the perpetrator, is punishable by two years' imprisonment and a fine of 30,000 euros. These provisions also apply in the case of threats made on account of these same functions against the spouse and linear ascendants and descendants of such person or against anyone else habitually residing in that person's home.

The penalty increases to five years' imprisonment and a fine of 75,000 euros if a death threat or a threat of damage to property that may be dangerous to persons is involved.

The use of threats, violence or any act of intimidation to induce persons in this category either to carry out or to refrain from carrying out acts related to their duties, mission or mandate or to abuse their actual or presumed authority in order to obtain a favourable decision, is punishable by 10 years' imprisonment and a fine of 150,000 euros.

Moreover, under article 434-8 of the Penal Code, any threat or act of intimidation against a magistrate, juror, or any person sitting in a jurisdictional capacity, an arbiter, interpreter, expert or the counsel of a party in order to influence their conduct in the discharge of their duties, is punishable by three years' imprisonment and a fine of 45,000 euros.

Protection of law enforcement officers

In addition to the reply given in the preceding paragraph, it should be noted that article 62-1 of the Code of Criminal Procedure provides that officers and agents of the Criminal Investigation Department participating in a proceeding are authorized to declare as their domicile the address of the headquarters to which they are assigned.

The Act of 9 March 2004, adapting judicial methods to the evolution in crime, inserted in the Code of Criminal Procedure articles 706-81 to 706-87, which enable the police to engage in undercover operations. The undercover officer or agent of the Criminal Investigation Department is authorized to make use of a borrowed identity, disclosure of which is punishable by terms of imprisonment that can range up to 10 years if such disclosure causes the death of the agent or of the agent's family members, and to commit certain offences defined by law and necessary for their undercover activity, without incurring criminal liability.

Protection of witnesses

Under article 434-15 of the Penal Code, the use of promises, offers, gifts, pressure, threats, assault and battery, schemes or tricks during a proceeding in order to induce another person to make a false deposition, declaration or affidavit, or to refrain from making one, is punishable by three years' imprisonment and a fine of 45,000 euros.

Protection of witnesses is governed by articles 706-57 to 706-63 of the Code of Criminal Procedure. They may, as authorized by the prosecutor or the examining magistrate, declare the address of police headquarters or that of the gendarmerie as their domicile.

In cases involving a crime or an offence punishable by at least three years' imprisonment, where the hearing of a witness may endanger the life or physical integrity of the witness or of his or her family members, the committing magistrate can authorize the person's statements to be taken without his or her identity appearing in the case file. The name and address of the person are placed in a separate file.

Disclosure of the witness's identity and address is punishable by five years' imprisonment and a fine of 75,000 euros.

The defendant may question the witness using a device which renders the witness's voice unidentifiable.

Protection of persons willing to provide information

New article 706-63-1 of the Code of Criminal Procedure provides that persons benefiting from exemptions or reduced penalties for making it possible to prevent the commission of offences, put an end to or mitigate the damage caused by an offence, or identify the perpetrators or abettors of offences and their associates, can also benefit from protection to ensure their security and measures to facilitate their reintegration. They can also make use of borrowed identities.

Disclosure of a borrowed identity is punishable by up to 10 years' imprisonment if it causes the death of the person or of his or her family member(s).

The protection and reintegration measures are defined by a national commission which establishes the obligations to be fulfilled and follows up on them.

1.9 The CTC would appreciate receiving a progress report on the ratification and implementation of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents that, according to the third report from France (at page 10), is under consideration by the National Assembly.

The adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, was authorized by Act No. 2003-556 of 26 June 2003. France deposited its instrument of ratification with the Secretary-General on 26 August 2003.

1.10 Effective implementation of paragraphs 1 and 2 of the resolution requires States to criminalize the financing of terrorism and to ensure that those who participate in terrorism are brought to justice. In this regard, could France provide the CTC with information relating to the number of persons prosecuted for:

– Terrorist activities;

– The financing of terrorist activities;

– The provision of support to terrorists or terrorist organizations.

How many of the people referred to immediately above have been prosecuted for inviting support, including recruitment, for:

– Proscribed organizations; and

– Other terrorist groups or organizations.

The statistics at the disposal of the Ministry of Justice do not make it possible to provide the Committee with the number of persons "prosecuted" if they have not received penal sentences. Only once sentence is pronounced is it recorded in the national judicial record.

(a) The sentences pronounced in France for offences falling under the definition of "*acts of terrorism*" (representing 16 different penal categories) between 1992 and 2003 are as follows:

1992	6	1997	6
1993	8	1998	54
1994	9	1999	110
1995	12	2000	124
1996	7	2001	65
		2002	53

(b) Acts of "*financing of terrorism*" have only occupied a separate penal category in French law since the adoption of the Act of 15 November 2001. Accordingly, if criminal investigations are currently being carried out on the basis of this specific offence, they have not led to convictions thus far.

(c) With regard to acts liable to be categorized as "*support to terrorists or terrorist organizations*", it is difficult to provide the Committee with an exhaustive reply, since the types of data contained in the national judicial record do not make it possible to isolate within the number of sentences pronounced those which deal, in whole or in part, with acts of complicity. However, the notion of "support" may correspond in part to that of complicity.

Moreover, certain penal categories may, depending on the particular elements of each case, be regarded as acts of "support" to terrorist organizations.

Nevertheless, some separate penal categories fall within the scope of conduct reflecting "support" to terrorists or terrorist organizations. This applies to:

- Direct and public apologies for terrorist acts;
- Participation in a criminal conspiracy for the preparation of a terrorist act;
- Participation in the reconstitution or maintenance of a disbanded movement or group.

For these three categories of offences (which, again, do not reflect the total number of sentences handed down to punish support for terrorist organizations), the number of sentences pronounced between 1998 and 2002 is as follows:

1998	41
1999	80
2000	97
2001	46
2002	44

Lastly, the inability to substantiate income, or "pimping for terrorism", can also correspond to the notion of "support" for terrorist activities. However, this offence (which makes it possible to punish anyone who cannot substantiate an income commensurate with his or her lifestyle, while being closely associated with one or more persons who engage in terrorist acts) was established very recently by the Act of 18 March 2003, so no information is available on any prosecutions instituted in this regard.

Effectiveness of customs, immigration and border control

1.12 Effective implementation of paragraphs 1 and 2 of the resolution requires States to take the necessary steps to prevent terrorist acts. Subparagraph 2 (g) seeks to prevent the movements of terrorists or terrorist groups by having in place effective customs and border controls to prohibit and suppress the financing of terrorist activities. Does France impose controls on the cross-border movements of liquid cash, negotiable instruments as well as precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorization before any such movement takes place)? Please provide information concerning any relevant monetary or financial thresholds.

In different ways, the customs administration is part of the international mobilization to combat terrorism, which lies within the scope of the obligations established by successive Security Council resolutions.

Its strategic position in monitoring and controlling the cross-border flow of people, goods and capital, the powers conferred on it and the importance attached to intelligence in its daily activities allow the customs administration to intervene in different ways, so as to apprehend the participants, the logistical means and the potential sources of financing for such activities.

With the support of existing missions, the activities of the French customs administration in this area are based on specific actions to combat the financing of terrorism (I) and on a strengthened system of intelligence-gathering and utilization, which is particularly important for detecting the possible use of the proceeds of terrorist activities, thus ensuring their control and suppression (II).

I. Customs administration plan of action to combat terrorism

The customs administration is already participating in structures and actions to combat money-laundering, and thus is naturally involved alongside the six other administrations or services of the Ministry of the Economy, Finance and Industry that have been brought together in the new unit to combat the financing of terrorism (FINATER), which was established on 27 September 2001.

This unit has been meeting regularly since then and has been tasked with ensuring strengthened cooperation among the various actors having information about large-scale trafficking, transparency of accounts, anti-money-laundering measures and links between traffickers.

The customs administration has at its disposal the legal means to participate actively in the effort to combat the financing of terrorism, for which a specific plan of action has been established, based on the following areas of intervention:

Monitoring the effectiveness of asset freezes and prosecuting those who fail to comply with them

Since 1945, customs officials have been authorized to investigate, report and prosecute breaches of the laws on overseas financial transactions. As measures to freeze assets lie within the scope of legislation on overseas financial transactions,

they can be monitored by customs officials on the basis of the powers and dispute provisions of the customs code.

In addition to the possibility of searching persons, vehicles and goods, customs officials can carry out house searches (article 64 of the customs code) and seize documents on the following grounds:

- Article 26 of the customs code (General right of seizure of customs officials) which allows officials to request the handover of "papers and documents of any kind relating to transactions of interest to the administration from any natural person or legal entity directly involved in proper or improper transactions within the competence of the customs administration".
- Article 152, paragraph 3, of the Monetary and Financial Code (Right of seizure of tax authorities), which allows officials to request from credit establishments and other related services "the date, the amounts of overseas transfers, the identification of the sender and the beneficiary, as well as the accounts used in France and abroad. These provisions apply equally to transactions carried out on behalf of such persons through non-resident accounts."

The National Intelligence and Investigation Service (DNRED) has exclusive competency in this area within the customs administration, and carries out investigations based on the results of inquiries made by the National Database of Bank Accounts (FICOBA), for which requests have been filed with the Directorate of Tax Inquiries (Directorate-General of Taxes).

Controlling cross-border movements of funds, securities and financial instruments

Since 1 January 1990, any natural person who transfers funds, securities or financial instruments in an amount greater than or equal to 7,600 euros between France and foreign countries must file a declaration to that effect with the customs administration (article 464 of the customs code).

Article 464

"*Natural persons who transfer to or from foreign countries funds, securities or financial instruments without the intermediary of an organization subject to Act No. 84-46 of 24 January 1984 on the activities and monitoring of credit establishments or an organization mentioned in article 8 of the said Act must file a declaration to that effect under conditions stipulated by decree. A declaration is required for each transfer, excluding transfers in an amount of less than 7,600 euros.*"

The funds, securities and financial instruments that must be declared are cash, cheques, endorsable claims of any kind, and gold and silver ingots and coins quoted on an official exchange.

Failure to comply is punishable by confiscation of the object in question or, if seizure is impossible, of an equivalent sum and a fine equal to no less than one fourth and no more than the total sum involved in the offence or attempted offence (article 465 of the customs code).

The significance of this reporting obligation as part of a global and integrated approach to combating the financing of terrorism is further reinforced by:

- The volume of cross-border movements that it reveals. In 2003, customs services discovered 1,722 breaches of the obligation to declare funds, securities or financial instruments amounting to nearly 145 million euros. At the same time, 24,485 declarations, representing a total of 958 million euros, were filed spontaneously by travellers.
- The finding that terrorist networks are resorting to "microfinance" stemming from fund-raising or cash donations which transit mainly through non-bank financial circuits.

Controlling gold, precious stones and other articles of a similar nature

The legislation on funds, securities and financial instruments includes within its scope of application gold (ingots and coins) and silver coins. This legislation has not been extended to other assets of this type because they are considered to be subject to customs laws like other goods. All imports and exports of such goods can be monitored by the customs administration because they are subject to a customs declaration.

Furthermore, it should be remembered that France is a party to the Kimberley Process, a mechanism aimed at preventing the entry onto the legal market of diamonds of dubious origin, whose sale could be used by opposing factions in southern Africa to purchase weaponry, thus perpetuating certain regional conflicts.

Although this mechanism applies primarily to tracing rough diamonds produced in that region of the world, it leads nonetheless to more ethical transactions and hinders the entry onto the market of stones sold to finance other illicit activities, whether or not they are of a criminal nature.

Monitoring foreign exchange dealers

The customs administration is also in charge of policing foreign exchange offices on behalf of the Banking Commission. The Directorate of Intelligence and Customs Inquiries carries out checks on the basis of an annual monitoring plan established in consultation with the Banking Commission and TRACFIN.

II. Daily activities of the customs services to combat the financing of terrorism

In general, the daily activities of the French customs administration in combating illicit trafficking contribute to the priority objective of combating the financing of terrorism. The Security Council, in resolution 1373 (2001), noted with concern the close connection between international terrorism, organized crime, illicit drug trafficking, money-laundering and smuggling of nuclear, chemical, biological and other deadly materials.

This nexus between international terrorism and the areas of operation of the customs administration is reinforced by the fact that criminal organizations also appear to use the proceeds of improper customs operations (smuggling of cigarettes, alcohol, etc.) to finance other illicit activities, from which terrorism cannot be excluded.

- The strengthened system of counter-terrorism intelligence-gathering and processing, which was established following the terrorist attacks of 11 September 2001, is aimed at uncovering such links in all the areas within the competence of the customs administration (drug and arms trafficking, cigarette smuggling, counterfeiting, etc.).

In addition to the appeal for vigilance throughout the services, a specialized unit was established within the National Intelligence and Investigation Service (DNRED), which analyses and processes intelligence obtained from the findings, including mere suspicions, of all the customs services.

In order to dismiss or confirm these suspicions regarding links with terrorist networks, this unit stays in close contact with both French and foreign intelligence services through its network of customs agents.

1.13 Paragraph 2 of the resolution also requires States to prevent the movement of terrorists and the establishment of safe havens. As regards international flights, does France compare the information contained in advanced passenger manifest programmes with the information contained in counter-terrorist databases, with a view to scanning inbound passengers before they land?

The comparison of information taken from international flight passenger lists with intelligence contained in counter-terrorism databases, with a view to checking passengers before landing or take-off, *is not carried out unless there is suspicion or a grave threat of an attack*.

Intelligence gathered by the counter-terrorism services on these occasions is sent to the centralized Anti-Terrorist Coordination Unit (UCLAT) and, when necessary, transmitted to their counterparts.

Controls on preventing access to weapons by terrorists

1.14 Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to control and prevent terrorist access to weapons. France indicated, in its first report (at p. 11) "France plans to supplement its legislation in the near future with provisions to control the brokerage of weapons deals". The Counter-Terrorism Committee would appreciate a progress report and an outline of such provisions as well as information on legal provisions adopted in order to strengthen the security of storage of explosives as well as the transportation of explosives and weapons.

(1) In 2002, France adopted a first set of regulations on control of intermediaries after the fact. These regulations require arms brokers to obtain government authorization to be able to carry out their activities. They oblige authorized intermediaries to keep a register of their activities and to present it to the authorities upon demand. To date, a dozen brokers have received authorization to trade.

This first tool should be supplemented by a law on prior control of arms brokerage deals.

The bill on intermediaries, which was introduced to the Senate in 2002, extends to arms brokerage activities the provisions of the Decree-Law of 18 April

1939 and the implementing regulations thereto. It obliges intermediaries residing or settled in France to obtain preliminary approval from the Prime Minister for all operations to enable the supply of weaponry or similar equipment abroad.

Arms brokerage is defined in article 23, paragraph 1, of the bill as follows: "all commercial or profit-making activities that aim either to bring together persons who wish to conclude a purchase or sale contract for weaponry or similar equipment or to conclude a contract of that type for one of the parties".

Article 25 of the Decree-Law of 1939 specifies the penalties for offences relating to the arms trade, including exports, as well as possession and manufacturing in the national territory.

The maximum penalty that can be incurred by a natural person is five years' imprisonment and a fine of 750,000 euros. The penalties incurred by legal entities are defined in article 131, paragraph 39, of the Penal Code. They include a prohibition of the activity during which the offence was committed.

(2) In order to protect manufacturing facilities and transports of explosive materials more effectively against theft and acts of mischief, the Government decided to amend Decree No. 90-153 of 16 February 1990, containing various provisions on the explosive materials regime, Decree No. 81-972 of 21 October 1981 on the labelling, purchase, delivery, possession, transport and use of explosive materials, and Decree No. 72-828 of 1 September 1972, setting out the reorganization of the commission on explosive substances. These draft decrees should be submitted to the Council of State in the near future. Their purpose is to reinforce the technical safety rules for the layout and operation of manufacturing plants and to improve the observance of safety requirements when permits to operate such facilities are issued. They also reinforce prior control of the trustworthiness of the owners and their employees. With regard to safety of transports of explosives, an obligation to inform the police and gendarmerie was introduced into the regulations.